IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RAYMOND KLAWITER and	:	**CIVIL ACTION**
ANN MARIE KLAWITER, h/w	:	
	:	
v.	:	
	:	
PAPER CONVERTING MACHINE CO.	:	**NO. 01-3626**

MEMORANDUM ORDER

This is a product liability action. Plaintiffs are citizens of Pennsylvania who reside in Feasterville. Defendant is a Wisconsin corporation with its principal place of business in Green Bay.

Plaintiffs initiated this action by filing with the Prothonotary of the Philadelphia Court of Common Pleas a praecipe for a writ of summons. The writ of summons was issued and served upon defendant. The writ informed defendant that plaintiffs had commenced an action against them seeking damages in excess of $150,000.00. The writ identified plaintiffs as citizens of Pennsylvania and defendant as a Wisconsin corporation with CT Corporation System as its authorized agent for service in the Commonwealth.

Plaintiffs served a complaint on defendant 110 days later. Defendant then filed a Notice of Removal pursuant to 28 U.S.C. § 1441(a). Plaintiff filed a timely motion for remand pursuant to 28 U.S.C. § 1447(c) on the ground that the notice of removal was untimely under 28 U.S.C. § 1446(b).

The removing party bears the burden of proving the propriety of removal. See Dukes v. U.S. Healthcare, Inc., 57 F.3d 350, 359 (3d Cir. 1995); Cartwright v. Thomas Jefferson Univ. Hosp., 99 F. Supp. 2d 550, 552 (E.D. Pa. 2000). Upon timely challenge, this includes proof of compliance with the procedural time requirements of 28 U.S.C. § 1446(b). See Telesis v. Atlis, 918 F. Supp., 823, 828 (D.N.J. 1996); Kluksdahl v. Muro Pharm., Inc., 886 F. Supp. 535, 537 (E.D. Va. 1995); Van Fossen v. Hartford Ins. Co., 1993 WL 514575, *1-2 (E.D. Pa. Dec. 10, 1993); Blow v. Liberty Travel, Inc., 550 F. Supp. 375, 376 (E.D. Pa. 1982). The untimely filing of a notice of removal is a ground for remand under 28 U.S.C. § 1447(c). See Page v. City of Southfield, 45 F.3d 128, 131 (6th Cir. 1995); Telesis, 918 F. Supp. at 828.

All doubts concerning the propriety of removal are resolved in favor of remand. Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990), cert. denied, 498 U.S. 1085 (1991); Barkley v. City of Philadelphia, 2001 WL 360102, *2 (E.D. Pa. Apr. 3, 2001); Apoian v. American Home Products, Corp., 108 F. Supp. 2d 454, 456 (E.D. Pa. 2000). Absent waiver, this includes doubts regarding the timeliness of removal. See Somlyo v. J. Lu-Rob Enterprises, Inc., 932 F.2d 1043, 1046 (2d Cir. 1991); Century Assets Corp. v. Solow, 88 F. Supp. 2d 659, 663 (E.D. Tex. 2000); Big B. Automotive Warehouse Distributors, Inc. v.

Cooperative Computing, Inc., 2000 WL 1677948, *3 (N.D. Cal. Nov. 1, 2000); Botelho v. Presbyterian Hosp. in the City of New York, 961 F. Supp. 75, 77 (S.D.N.Y. 1997).

It is clear that this action was removed within thirty days of service of the complaint and far more than thirty days after service of the writ of summons. The sole question is thus whether the writ of summons provided defendant with "adequate notice" of federal jurisdiction. Foster v. Mutual Fire & Inland Ins. Co., 986 F.2d 48, 54 (3d Cir. 1993). A writ provides adequate notice if it informs the reader with a "substantial degree of specificity" that federal jurisdiction is present. Id. at 53. The inquiry is thus necessarily case specific.

Defendant's sole contention is that the writ of summons does not establish that it is a citizen of a state other than Pennsylvania because although it identifies the state by which it has been incorporated, it does not identify its principal place of business. While plaintiffs may not have provided a model statement of corporate citizenship, the court cannot conscientiously conclude that the writ of summons failed adequately to inform the reader with a substantial degree of specificity that diversity jurisdiction was present.

Diversity would be absent only if defendant's principal place of business was in Pennsylvania. Defendant had designated an agent for purposes of service of process in Pennsylvania.

This strongly suggests that defendant itself did not maintain premises in the Commonwealth at which it could be served directly. Indeed, CT Corporation System is generally recognized in the corporate and legal communities as an entity which exists for the very purpose of facilitating service upon corporations which are privileged to conduct business in the Commonwealth but do not maintain a physical presence here. The test is not one of absolute certainty. A writ need only inform the reader with a substantial degree of specificity that federal jurisdiction is present. The instant writ foreclosed all but the most abstract possibility that the citizenship of the respective parties was not diverse.

Sprauge v. American Bar Ass'n, et al., 2001 WL 360154 (E.D. Pa. April 3, 2001), on which defendant relies, is not apposite. The writ of summons and accompanying civil cover sheet in that case failed to provide the citizenship of any of the parties. It merely listed addresses for the various parties. Moreover, the documents at issue in Sprauge did not set forth the requisite amount in controversy. See id. at *3. That this was critical to the court's decision is apparent from an earlier case in which the same judge determined that the defendant had adequate notice of the existence of diversity jurisdiction from a writ of summons and cover sheet which contained the parties' addresses and set forth the requisite amount in controversy. See

Scerati v. Lewellyn Manufacturing, Inc., 1996 WL 334376, *3 (E.D. Pa. June 18, 1996).

ACCORDINGLY, this day of January, 2002, upon consideration of plaintiffs' Motion for Remand (Doc. #5) and defendant's response thereto, **IT IS HEREBY ORDERED** that plaintiffs' Motion is **GRANTED** and, pursuant to 28 U.S.C. § 1447(c), this action is **REMANDED** to the Court of Common Pleas of Philadelphia.

BY THE COURT:

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JAY C. WALDMAN, J.